

1982 WL 189220 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 25, 1982

*1 Mr. T. A. Johnson
Post Office Box 734
Mauldin, South Carolina 29662

Dear Mr. Johnson:

You have asked the opinion of this Office on the question of whether a person concurrently holding positions as a Right of Way Appraiser for the Department of Highways and Public Transportation and a State Constable would be in violation of the provisions in the South Carolina Constitution prohibiting dual office holding.

[Article XVII, Section 1A of the South Carolina Constitution](#) states that ‘. . . no person shall hold two offices of honor and profit at the same time.’ Also see Article VI, Section 3. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue, 78 S.C. 171 \(1907\)](#). Another relevant consideration is whether statutes, or other such authority, establish tenure, duties, salary, oath, etc., for the position involved. [State v. Crenshaw](#), South Carolina Supreme Court, Op. No. 21189, 4-9-80. This Office has concluded in numerous opinions that the position of a State constable without pay or compensation is a public office within the meaning of [Article XVII, Section 1A](#). See, e.g., 1973 Op. Att’y. Gen. No. 3455; and opinions attached hereto.

As to the position of Right of Way Appraiser for the Department of Highways and Public Transportation, this does not appear to constitute an ‘office’ under the dual office holding provisions of the Constitution. The position is not one created by statute and is not one involving the exercise of any portion of the sovereign power of the State. A person holding this position would be a state employee, but not an office holder in the constitutional sense.

Based on the foregoing, it is the opinion of this Office that a person concurrently holding the positions of Right of Way Appraiser for the Department of Highways and Public Transportation and State Constable would not be in violation of the provision of the South Carolina Constitution prohibiting dual office holding.

You have also asked this Office to clarify a portion of an opinion of the State Ethics Commission directed to monitoring of outside employment by a public agency. Since this is not our opinion and does not concern the dual office holding question you have raised, we are not able to provide clarification, but suggest that you contact the State Ethics Commission in this regard.

Very truly yours,

Helen T. Zeigler
Staff Attorney

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